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PART II — Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in the Lok Sabha on 22nd August, 2005:—

BILL NO. 109 OF 2005

A Bill further to amend the Khadi and Village Industries Commission Act, 1956.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Khadi and Village Industries Commission (Amendment) Act, 2005.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, specify in this behalf.

61 of 1956.

2. In section 2 of the Khadi and Village Industries Commission Act, 1956 (hereinafter referred to as the principal Act), in clause (h), in sub-clause (i), for the words "fifteen thousand rupees", the words "one lakh rupees" shall be substituted.

Amendment of section 2.

3. In section 4 of the principal Act,—

Amendment of section 4.

(a) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Save as otherwise provided under this Act and the rules made thereunder, the exercise of all powers and discharge of all functions under this Act, including general superintendence, direction and management of day-to-day affairs of the Commission, shall vest in the Commission.";

(b) in sub-section (2),—

(i) in clause (a), for the words "having specialised knowledge and experience of khadi and village industries", the words "having specialised knowledge and not less than ten years of experience of khadi or village industries" shall be substituted;

(ii) for clause (b), the following clause shall be substituted, namely:—

"(b) three non-official members of whom each member having expert knowledge and experience in the following disciplines, namely:—

(i) one member having expert knowledge and experience in the discipline of Science and Technology;

(ii) one member having expert knowledge and experience in the discipline of Marketing; and

(iii) one member having expert knowledge and experience in the discipline of Economics or Planning or Rural Development or Technical Education and Training;"

(iii) after clause (b), the following clause shall be inserted, namely:—

"(ba) the Chairman of the State Bank of India constituted under sub-section (1) of section 3 of the State Bank of India Act, 1955 or an officer not below the rank of the Deputy Managing Director as may be nominated by the Chairman of the State Bank of India—*ex officio*;"

23 of 1955.

(iv) for clauses (c) and (d), the following clauses shall be substituted, namely:—

"(c) a Chief Executive Officer, *ex officio*; and

(d) one Financial Adviser, who shall also be the Chief Accounts Officer of the Commission, *ex officio*;"

(v) after clause (d), the proviso shall be omitted.

Amendment of
section 5.

4. In section 5 of the principal Act,—

(a) for sub-section (1), the following sub-sections shall be substituted, namely:—

"(1) Subject to the provisions contained in sub-section (1A) of section 4, the Chief Executive Officer, appointed under clause (c) of sub-section (2) of section 4, shall exercise such powers and discharge such functions in respect of general superintendence over the affairs of the Commission and its day-to-day management, as may be prescribed.

(1A) Without prejudice to the powers and functions referred to in sub-section (1), the Chief Executive Officer shall exercise such powers and discharge such functions under the general superintendence, direction and management of the Commission."

(b) in sub-section (2), for the words "shall be responsible", the words "shall, in addition to exercise of the powers and discharge of the functions referred to in sub-section (1), be responsible" shall be substituted.

5. In section 5A of the principal Act, for the words, brackets, letter and figures "appointed under clause (c) of sub-section (2) of section 4 shall be in charge of all financial matters of the Commission including its budget, accounts and audit", the words, brackets, letter and figures "appointed under clause (d) of sub-section (2) of section 4 shall be in charge of such financial matters of the Commission including its budget, accounts and audit, as may be prescribed" shall be substituted.

Amendment of section 5A.

6. Section 10 of the principal Act, shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-sections shall be inserted, namely:—

Amendment of section 10.

"(2) The Board shall, subject to the provisions of sub-section (3), meet at such times and places and observe such rules of procedure in regard to the transaction of business at its meetings including the quorum at meetings as may be prescribed.

(3) The Board shall meet at least twice in a year."

7. In section 12 of the principal Act, in sub-section (3), for the words "votes of the members present", the words and brackets "votes of the members (including *ex officio* members) present" shall be substituted.

Amendment of section 12.

8. After section 12 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 12A.

"12A. (1) The Commission shall constitute for each of the six geographical zones, referred to in clause (a) of sub-section (2) of section 4, a Zonal Committee, which shall consist of the following, namely:—

Zonal Committee.

(a) the non-official member representing the Zone, referred to in clause (a) of sub-section (2) of section 4, who shall be the Chairman of the Zonal Committee constituted for respective zones;

(b) the Chairman of each of the State Khadi and Village Industries Boards of the States in the Zone—member;

(c) the Zonal Deputy Chief Executive Officer of the Commission, who shall be the convener of the Zonal Committee—member;

(d) the State Directors in-charge of the Commission's Directorates for the States in the zone—member; and

(e) a Zonal or Regional manager of one of the lead banks operating in the zone—member.

(2) The Zonal Committee shall meet at such times and places and shall, subject to the provisions of sub-section (3), observe such rules of procedure in regard to the transaction of business at its meetings (including the quorum at the meetings) as may be provided by regulations made by the Commission under this Act:

Provided that the Committee shall meet at least once in every three months.

(3) The Chairman of the Zonal Committee or, in his absence, any member chosen by the members present from among themselves, shall preside at a meeting of the Committee.

(4) The Zonal Committee shall generally function as a forum for consultation and, accordingly, *inter alia*,—

(a) act as a conduit for the dissemination of information relating to the programmes and schemes of the Commission for the development of khadi and village industries in the zone;

(b) monitor, from time to time, the implementation of the programmes and schemes referred to in clause (a);

(c) provide feedback to the Commission on the problems and difficulties envisaged and suggestions made by banks, voluntary agencies, artisans and others engaged in the operation of programmes and schemes referred to in clause (a).”.

Amendment of
section 13.

9. In section 13 of the principal Act, in sub-section (1), for the words “for a term of five years”, the words “at the pleasure of the Central Government which shall not exceed continuous period of five years” shall be substituted;

Amendment of
section 15.

10. In section 15 of the principal Act,—

(a) in sub-section (1), for the words “plan, promote, organise”, the words “plan, promote, facilitate, organise” shall be substituted;

(b) in sub-section (2),—

(i) in clause (a), for the words “plan and organise”, the words “plan and organise, directly or through specified agencies” shall be substituted;

(ii) in clause (b),—

(A) for the words “build up”, the words “build up directly or through specified agencies” shall be substituted;

(B) for the words “supply them”, the words “supply them or arrange supply of the raw materials and implements” shall be substituted;

(iii) in clause (g), for the words “provide financial assistance”, the words “provide financial assistance, directly or through specified agencies,” shall be substituted;

(iv) in clause (h), for the words “undertake experiments” the words “undertake, directly or through specified agencies, experiments,” shall be substituted;

(c) after sub-section (2), the following *Explanation* shall be inserted at the end, namely:—

Explanation.—For the purposes of clauses (a), (b), (g) and (h), of sub-section (2) the expression “specified agencies” means the agencies which the Central Government may, by notification in the Official Gazette, specify in this behalf.’

Amendment of
section 19A.

11. In section 19A of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

“Provided that the Chief Executive Officer and Financial Adviser shall be *ex officio* members of the Standing Finance Committee in respect of each of the three separate funds referred to in sub-section (1) of section 18.”.

Amendment of
section 25.

12. In section 25 of the principal Act, after sub-section (2), the following sub-section shall be inserted at the end, namely:—

“(3) Any time after the issue of the notification under sub-section (1), the Central Government may re-establish the Commission in accordance with the provisions of section 4 and on and from the date of the re-establishment of the Commission, the properties and funds which had previously vested in the Central Government under clause (a) of sub-section (2) shall stand vested in the Commission so re-established.”.

13. In section 26 of the principal Act, in sub-section (2), after clause (a), the following clauses shall be inserted, namely:—

Amendment of
section 26.

“(aa) the powers to be exercised and functions to be discharged by the Chief Executive Officer under sub-section (1) of section 5;

(ab) the financial matters in respect of which the Financial Adviser shall be in charge under section 5A;

(ac) the transaction of business at the meetings of the Board under sub-section (2) of section 10;”.

14. In section 27 of the principal Act, in sub-section (2),—

Amendment of
section 27.

(i) after clause (b), the following clause shall be inserted, namely:—

“(ba) the transaction of business at the meetings of the Zonal Committee under sub-section (2) of section 12A;”;

(ii) in clause (c), the words “the Chief Executive Officer or” shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Khadi and Village Industries Commission (KVIC) is a statutory body established under the Khadi and Village Industries Commission Act, 1956 (61 of 1956) to provide for the establishment of a Commission for the development of khadi and village industries and for matters connected therewith.

2. It has, however, been found that due to certain difficulties, there has been steep decline in employment in the khadi sector and sales of khadi products since 1997-98 have been more or less stagnant.

3. Consequent upon certain administrative and financial difficulties in the working of the Khadi and Village Industries Commission and decline in the sales and employment in the khadi sector, the Central Government dissolved the Khadi and Village Industries Commission and constituted an Expert Committee to examine the structure, functioning and performance of the Khadi and Village Industries Commission and recommend measures to revamp the Khadi and Village Industries Commission and launch new programmes. The Expert Committee submitted its report on the 6th April, 2005.

4. The Central Government proposes to amend the Khadi and Village Industries Commission Act, 1956 incorporating therein the accepted recommendations of the Expert Committee and, *inter alia*, seeks to—

- (a) include two more part-time members in the Khadi and Village Industries Commission;
- (b) confer voting rights upon the *ex officio* members of the Commission;
- (c) provide requirement of ten years of experience in appropriate fields for appointment as a member of the Commission and also widen the field of expertise for appointment as a member of the Commission;
- (d) make specific provisions for clear demarcation of functions and powers among the Commission, the Chief Executive Officer and the Financial Adviser of the Commission;
- (e) provide for constitution of Zonal Committees, its functions and meetings;
- (f) make specific provisions for undertaking certain functions by the Commission through specified agencies;
- (g) clarify that the Chairman and Members of the Commission shall hold office at the pleasure of the Central Government which shall not exceed continuous period of five years as such in the Commission;
- (h) confer power upon the Central Government to re-establish the Commission after its dissolution; and
- (i) make other provisions which are clarificatory or consequential in nature.

5. The Bill seeks to achieve the above objects.

NEW DELHI;
The 9th August, 2005.

MAHABIR PRASAD.

FINANCIAL MEMORANDUM

Clause 2 of the Bill proposes to amend the definition of "Village industry" specified in clause (h) of section 2 of the Khadi and Village Industries Commission (KVIC) Act, 1956. The amendments proposed to be made to KVIC Act, 1956 by the Khadi and Village Industries Commission (Amendment) Bill, 2005 do not require any new appropriation to be made by Parliament or any substantial additional expenditure. The amendment proposed in the definition of "village industry" raises the fixed capital investment per head of an artisan or worker to an amount not exceeding one lakh rupees instead of fifteen thousand rupees under the existing provisions. This may result in increase in the number of Village Industries which will be eligible for assistance by the KVIC. However, there may not be any significant increase in expenditure, as this will be done within the plan and non-plan budget allocations currently being made.

2. Sub-clause (b) of clause 3 of the Bill, *inter alia*, proposes to amend clause (b) of sub-section (2) of section 4 of KVIC Act, 1956. It is proposed to increase the number of members of the Commission from ten to twelve. The consequent increase in the expenditure would be met out of the non-plan funds which are currently provided to the KVIC.

3. Clause 6 of the Bill proposes to amend section 10 of the KVIC Act, 1956 relating to constitution of the Board. Another amendment proposes regular holding of the meetings of the All India Khadi and Village Industries Board. The consequent expenses on holding such meetings will be met out of the existing non-plan budget provisions of the Ministry.

4. Clause 8 of the Bill proposes to insert a new section 12A in the KVIC Act, 1956 relating to Zonal Committees. There is a provision for constituting Zonal Committees for each of the six prescribed geographical zones. Consequent expenditure on holding of the meetings of these committees would be met out of the plan funds being provided under the heads of Khadi Grant and Village Industries Grant to KVIC.

5. The other amendments do not have any financial implications.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill proposes to amend section 26 of the Khadi and Village Industries Commission Act, 1956 which confers upon the Central Government the power to make rules for carrying out the provisions of the Bill. The matters in respect of which such rules may be made, *inter alia*, include the powers to be exercised and functions to be discharged by the Chief Executive Officer under sub-section (1) of section 5; the financial matters in respect of which the Financial Adviser shall be in-charge under section 5A; and the transaction of business at the meetings of the Board under sub-section (2) of section 10.

2. Clause 14 of the Bill proposes to amend section 27 of the Khadi and Village Industries Commission Act, 1956 which confers power upon the Khadi and Village Industries Commission to make, with previous sanction of the Central Government, regulations for the transaction of the business at the meetings of the Zonal Committee under sub-section (2) of section 12A.

3. The rules made by the Central Government and the regulations made by the Khadi and Village Industries Commission with the previous sanction of the Central Government shall be laid, as soon as may be, after they are made, before each House of Parliament.

4. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 115 OF 2005

A Bill further to amend the Prevention of Insults to National Honour Act, 1971.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Prevention of Insults to National Honour (Amendment) Act, 2005. Short title.

2. In the Prevention of Insults to National Honour Act, 1971, in section 2, in *Explanation 4*, for clause (e), the following clause shall be substituted, namely:— Amendment of section 2 of Act 69 of 1971.

“(e) using the Indian National Flag,—

(i) as a portion of costume, uniform or accessory of any description which is worn below the waist of any person; or

(ii) by embroidering or printing it on cushions, handkerchiefs, napkins, undergarments or any dress material; or”.

STATEMENT OF OBJECTS AND REASONS

Section 2 of the Prevention of Insults to National Honour Act, 1971, *inter alia*, provides punishment for disrespect to the National Flag. One of the actions that constitutes disrespect to the National Flag is using the National Flag as a portion of costume or uniform of any description or embroidering or printing it on cushions, handkerchiefs, napkins or any dress material.

2. There were demands from the common citizens in general, and the sportspersons in particular, to express their love and affection for the National Flag by displaying it on their dresses, headgear, T-shirts, vests, etc., in a respectable manner. The Department related Parliamentary Standing Committee on Home Affairs was also of the view that the restrictions imposed by Explanation 4(e) of section 2 of the said Act are demotivating the general public and sportspersons.

3. In view of the above, it is proposed to amend the said Explanation of section 2 of the said Act, which will enable the members of the public to use the National Flag on their costumes, uniform or accessory of any description in a respectable manner with the safeguard that the National Flag shall not be used as a portion of costumes, uniform or accessory of any description worn below the waist, nor it would be used by way of embroidering or printing in items of daily use such as cushions, handkerchiefs, napkins, undergarments or any dress material.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 10th August, 2005.

SHIVRAJ V. PATIL.

BILL NO. 116 OF 2005

A Bill to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Protection of Women from Domestic Violence Act, 2005.

Short title,
extent and
commencement.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

(a) “aggrieved person” means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;

(b) "child" means any person below the age of eighteen years and includes any adopted, step or foster child;

(c) "compensation order" means an order granted in terms of section 22;

(d) "custody order" means an order granted in terms of section 21;

(e) "domestic incident report" means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person;

(f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;

(g) "domestic violence" has the same meaning as assigned to it in section 3;

(h) "dowry" shall have the same meaning as assigned to it in section 2 of the Dowry Prohibition Act, 1961;

28 of 1961.

(i) "Magistrate" means the Judicial Magistrate of the first class, or as the case may be, the Metropolitan Magistrate, exercising jurisdiction under the Code of Criminal Procedure, 1973 in the area where the aggrieved person resides temporarily or otherwise or the respondent resides or the domestic violence is alleged to have taken place;

2 of 1974.

(j) "medical facility" means such facility as may be notified by the State Government to be a medical facility for the purposes of this Act;

(k) "monetary relief" means the compensation which the Magistrate may order the respondent to pay to the aggrieved person, at any stage during the hearing of an application seeking any relief under this Act, to meet the expenses incurred and the losses suffered by the aggrieved person as a result of the domestic violence;

(l) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;

(m) "prescribed" means prescribed by rules made under this Act;

(n) "Protection Officer" means an officer appointed by the State Government under sub-section (1) of section 8;

(o) "protection order" means an order made in terms of section 18;

(p) "residence order" means an order granted in terms of sub-section (1) of section 19;

(q) "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

(r) "service provider" means an entity registered under sub-section (1) of section 10;

(s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

(t) "shelter home" means any shelter home as may be notified by the State Government to be a shelter home for the purposes of this Act.

CHAPTER II

DOMESTIC VIOLENCE

3. For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it —

Definition of domestic violence.

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.—For the purposes of this section,—

(i) “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “verbal and emotional abuse” includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) “economic abuse” includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, *stridhan*, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her *stridhan* or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

CHAPTER III

POWERS AND DUTIES OF PROTECTION OFFICERS, SERVICE PROVIDERS, ETC.

Information to Protection Officer and exclusion of liability of informant.

4. (1) Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.

(2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

Duties of police officers, service providers and Magistrate.

5. A police officer, Protection Officer, service provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person—

(a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;

(b) of the availability of services of service providers;

(c) of the availability of services of the Protection Officers;

(d) of her right to free legal services under the Legal Services Authorities Act, 1987;

39 of 1987.

(e) of her right to file a complaint under section 498A of the Indian Penal Code, wherever relevant:

45 of 1860.

Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

Duties of shelter homes.

6. If an aggrieved person or on her behalf a Protection Officer or a service provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

Duties of medical facilities.

7. If an aggrieved person or, on her behalf a Protection Officer or a service provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person in the medical facility.

Appointment of Protection Officers.

8. (1) The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

(2) The Protection Officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed.

(3) The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

Duties and functions of Protection Officers.

9. (1) It shall be the duty of the Protection Officer—

(a) to assist the Magistrate in the discharge of his functions under this Act;

(b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

(c) to make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;

39 of 1987.

(d) to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 and make available free of cost the prescribed form in which a complaint is to be made;

(e) to maintain a list of all service providers providing legal aid or counselling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;

(f) to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;

(g) to get the aggrieved person medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;

2 of 1974.

(h) to ensure that the order for monetary relief under section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973;

(i) to perform such other duties as may be prescribed.

(2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

21 of 1860.
1 of 1956.

10. (1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing of legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

Service
providers.

(2) A service provider registered under sub-section (1) shall have the power to—

(a) record the domestic incident report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

(b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

(c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

(3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this Act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this Act towards the prevention of the commission of domestic violence.

11. The Central Government and every State Government, shall take all measures to ensure that—

Duties of
Government.

(a) the provisions of this Act are given wide publicity through public media including the television, radio and the print media at regular intervals;

(b) the Central Government and State Government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act;

(c) effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence is established and periodical review of the same is conducted;

(d) protocols for the various Ministries concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

CHAPTER IV

PROCEDURE FOR OBTAINING ORDERS OF RELIEFS

Application
to Magistrate.

12. (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

5 of 1908.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

Service of
notice.

13. (1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved.

Counselling.

14. (1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.

(2) Where the Magistrate has issued any direction under sub-section (1), he shall fix the next date of hearing of the case within a period not exceeding two months.

15. In any proceeding under this Act, the Magistrate may secure the services of such person, preferably a woman, whether related to the aggrieved person or not, including a person engaged in promoting family welfare as he thinks fit, for the purpose of assisting him in discharging his functions.

Assistance of welfare expert.

16. If the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings so desires, he may conduct the proceedings under this Act *in camera*.

Proceedings to be held *in camera*.

17. (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

Right to reside in a shared household.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

18. The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

Protection orders.

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her *stridhan* or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order —

Residence orders.

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 and shall be dealt with accordingly.

2 of 1974.

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled to.

Monetary
reliefs.

20. (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force.

2 of 1974.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

21. Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Custody orders.

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

22. In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

Compensation orders.

23. (1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper.

Power to grant interim and *ex parte* orders.

(2) If the Magistrate is satisfied that an application *prima facie* discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an *ex parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent.

24. The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of cost, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

Court to give copies of order free of cost.

25. (1) A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

Duration and alteration of orders.

(2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

26. (1) Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

Relief in other suits and legal proceedings.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

Jurisdiction.

27. (1) The court of Judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which—

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or

(b) the respondent resides or carries on business or is employed; or

(c) the cause of action has arisen,

shall be the competent court to grant a protection order and other orders under this Act and to try offences under this Act.

(2) Any order made under this Act shall be enforceable throughout India.

Procedure.

28. (1) Save as otherwise provided in this Act, all proceedings under sections 12, 18, 19, 20, 21, 22 and 23 and offences under section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973.

2 of 1974.

(2) Nothing in sub-section (1) shall prevent the court from laying down its own procedure for disposal of an application under section 12 or under sub-section (2) of section 23.

Appeal.

29. There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

CHAPTER V

MISCELLANEOUS

Protection Officers and members of service providers to be public servants.

30. The Protection Officers and members of service providers, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Penalty for breach of protection order by respondent.

31. (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, as the case may be, if the facts disclose the commission of an offence under those provisions.

45 of 1860.

28 of 1961.

Cognizance and proof.

32. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the offence under sub-section (1) of section 31 shall be cognizable and non-bailable.

2 of 1974.

(2) Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) of section 31 has been committed by the accused.

Penalty for not discharging duty by Protection Officer.

33. If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

34. No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorised by it in this behalf.

Cognizance of offence committed by Protection Officer.

35. No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

Protection of action taken in good faith.

36. The provisions of this Act shall be in addition to, and not in derogation of the provisions of any other law, for the time being in force.

Act not in derogation of any other law.

37. (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

Power of Central Government to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of section 8;

(b) the terms and conditions of service of the Protection Officers and the other officers subordinate to him, under sub-section (3) of section 8;

(c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of section 9;

(d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of section 9;

(e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of section 9;

(f) the other duties to be performed by the Protection Officer under clause (i) of sub-section (1) of section 9;

(g) the rules regulating registration of service providers under sub-section (1) of section 10;

(h) the form in which an application under sub-section (1) of section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;

(i) the means of serving notices under sub-section (1) of section 13;

(j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of section 13;

(k) the qualifications and experience in counselling which a member of the service provider shall possess under sub-section (1) of section 14;

(l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of section 23;

(m) any other matter which has to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, *inter alia*, seeks to provide for the following:—

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.

(ii) It defines the expression “domestic violence” to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.

Notes on clauses

Clause 1.—This clause provides for the short title, extent and commencement of the proposed legislation. The proposed legislation will extend to the whole of India except to the State of Jammu and Kashmir in the area of protection of women who are victims of violence of any kind occurring within the family. As adequate steps have to be taken for administering the provisions of the Bill, provision has been made empowering the Central Government to appoint the date of commencement of the proposed legislation, by notification in the Official Gazette.

Clause 2.—This clause defines the various expressions occurring in the proposed legislation. The definitions of "aggrieved person", "domestic relationship", "domestic violence", "monetary relief", "Protection Officer", "protection order", "residence order", "respondent", "service provider" and "shared household" are some of them. As per the proposed legislation, any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to act of domestic violence by the respondent is an aggrieved person. The expression "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are members of a family living together as a joint family. The word "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the proposed legislation provided that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint under the proposed legislation against a relative of the husband or male partner.

Clause 3.—This clause defines the expression "domestic violence". Any act, omission or commission or conduct of the respondent shall amount to domestic violence in certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional or economic abuse which are also explained in the clause. In determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence", the overall facts and circumstances of the case shall be a guiding factor.

Clause 4.—This clause seeks to provide that any person who has reason to believe that an act of domestic violence has been or is being committed, such person may inform the Protection Officer. It also lays down that the person who is providing the information in good faith shall be exempt from any civil or criminal liability for giving such information.

Clause 5.—This clause lays down the duties of a police officer, Protection Officer, service provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the proposed legislation, the availability of services of service providers and Protection Officers, her right to avail free legal services under the Legal Services Authorities Act, 1987 and her right to file a complaint under section 498A of the Indian Penal Code, wherever relevant. It is also envisaged that this clause shall not relieve any police officer from his duty to proceed in accordance with law on receipt of information as to commission of a cognizable offence.

Clause 6.—This clause seeks to provide that the person in charge of a shelter home shall be bound to provide shelter to the aggrieved person on being requested by the aggrieved person or, on her behalf by a Protection Officer or a service provider.

Clause 7.—This clause seeks to provide that the person in charge of the medical facility shall be bound to provide medical aid to the aggrieved person if requested by her or on her behalf by a Protection Officer or a service provider.

Clause 8.—This clause empowers the State Government to appoint, by notification in the Official Gazette, such number of Protection Officers in each District as it considers necessary and also to notify the area in which such Protection Officer shall exercise the powers conferred and discharge the duties imposed under the proposed legislation. It also

provides that the Protection Officers shall, as far as possible, be women and shall possess such qualifications and experience as may be laid down by the Central Government, by rules. The terms and conditions of service of the Protection Officer and the other officers subordinate to him may also be regulated by rules.

Clause 9.—This clause lays down the duties and functions of the Protection Officers. The Protection Officer may assist the Magistrate in the discharge of his functions under the proposed legislation, make a domestic incident report to the Magistrate, make an application to the Magistrate if the aggrieved person so desires praying for issuance of a protection order, ensure legal aid to the aggrieved person under the Legal Services Authorities Act, 1987, maintain a list of service providers, make available a safe shelter home if the aggrieved person so requires, get the aggrieved person medically examined if she has sustained bodily injuries, ensure that the order for monetary relief under section 20 of the proposed legislation is complied with and executed in accordance with the provisions of the Code of Criminal Procedure, 1973, and perform such other duties as may be laid down by the Central Government, by rules. It also stipulates that the Protection Officer shall be under the control and supervision of the Magistrate and perform the duties assigned to him by the Magistrate and the Government by or under the proposed legislation.

Clause 10.—This clause provides for the registration of certain entities with the State Government as a service provider for the purposes of the proposed legislation. Any voluntary association registered under the Societies Registration Act, 1860 or a company registered under the Companies Act, 1956 or under any other law, having the objective of protecting the rights and interests of women by lawful means including providing legal aid, medical, financial or other assistance shall be eligible to be registered under the proposed legislation as per the procedure laid down by rules. This clause also enumerates the powers of a service provider. Such powers include the power to record the domestic incident report, to get the aggrieved person medically examined and to ensure that the aggrieved person is provided shelter in a shelter home, if she so requires. This clause further provides immunity to the service provider or any member of the service provider for anything done or intended to be done in good faith under the proposed legislation, from any suit, prosecution or other legal proceeding.

Clause 11.—This clause stipulates the duties of the Central Government and the State Governments. These duties are to give wide publicity to the provisions of the proposed legislation, to give sensitization and awareness training on the issues addressed by the proposed legislation to Government officers including police officers and members of judicial service, to ensure effective coordination between Ministries and Departments dealing with law, home affairs, law and order, health and human resources in the services provided by them on the issues of domestic violence and to put in place protocols for the Ministries and courts concerned with the delivery of services to women under the provisions of the proposed legislation.

Clause 12.—This clause lays down that the aggrieved person or Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the proposed legislation including order for payment of compensation or damages without prejudice to the rights of such person to institute a suit for compensation or damages for the injuries sustained in the act of domestic violence committed by the respondent. While disposing of an application under sub-clause (1), the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider. The amount paid or payable to the aggrieved person by an order made by the Magistrate under the proposed legislation shall be set off against the amount of decree of compensation or damages passed by any court in favour of the aggrieved person. Sub-clause (3) provides the format and particulars of the application under this clause shall be as nearly as possible to the format laid down by the Central Government by rules. Sub-clauses (4) and (5) provide that the Magistrate shall fix the first date of hearing of the application ordinarily within three days of its receipt and shall endeavour to dispose of every application within sixty days of the first hearing.

Clause 13.—This clause provides that a notice of the date of hearing of an application for relief shall be given by the Magistrate to the Protection Officer who shall get it served by such means as may be prescribed by the Central Government on the respondent and on any other person within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate. A declaration of service of notice made by the Protection Officer in the form set out by the Central Government by rules shall be a proof of service of notice.

Clause 14.—This clause empowers the Magistrate to direct at any stage of the proceedings, the respondent or the aggrieved person either singly or jointly to undergo counselling with any member of a service provider. The member of the service provide providing the counselling shall possess such qualifications and experience as may be laid down by the Central Government, by rules. Where any counselling has been ordered under this clause, the Magistrate shall fix the next date of hearing of the case within a period not exceeding two months.

Clause 15.—This clause stipulates that the Magistrate may secure the services of a suitable person preferably a woman whether related to the aggrieved person or not, including a person engaged in promoting family welfare for the purposes of assisting the court in the discharge of its functions.

Clause 16.—This clause provides for proceedings to be held *in camera* at the discretion of the Magistrate or if either party to the proceedings so desires.

Clause 17.—This clause lays down that irrespective of any contrary provision in any other law, every woman in a domestic relationship shall have the right to reside in the shared household and the aggrieved person shall not be evicted or excluded from the shared household by the respondent except in accordance with the procedure established by law.

Clause 18.—This clause provides that the Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being *prima facie* satisfied that domestic violence has taken place or is likely to take place, may pass a protection order in favour of the aggrieved person. A protection order may contain an order prohibiting the respondent from committing any act of domestic violence or aiding or abetting therein, entering the place of employment of the aggrieved person or if the person aggrieved is a child its school, or any other place frequented by the aggrieved person or attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate, alienating any assets, operating bank lockers or bank accounts belonging to both the parties jointly or to the respondent singly, including her *stridhan* or any other property held jointly or separately by them, causing violence to the dependents, other relatives or any person giving the aggrieved person assistance from domestic violence or committing any other act as specified in the protection order.

Clause 19.—This clause provides that the Magistrate may on being satisfied that domestic violence has taken place pass a residence order restraining the respondent from dispossessing or disturbing the possession of the aggrieved person from the shared household, directing the respondent to remove himself from the shared household, restraining the respondent or his relatives from entering the shared household, restraining the respondent from alienating or disposing off or encumbering the shared household, restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate, or directing the respondent to secure alternate accommodation for the aggrieved person of the same level as enjoyed by her in the shared household or to pay rent for the same. It is also provided in this clause that no order shall be passed against any person who is a woman directing her to remove herself from the shared household. Sub-clause (2) empowers the Magistrate to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. Sub-clause (3) provides for execution of a bond by the respondent for prevention of the domestic violence. Sub-clause (5) empowers the Magistrate to pass an order directing the officer in charge of the concerned police station to give protection to the aggrieved person or to assist in implementation of the residence

order. It is also provided in this clause that the Magistrate may impose on the respondent an obligation to discharge rent and other payments and to direct the respondent to return to the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled.

Clause 20.—This clause empowers the Magistrate to pass orders for grant of monetary relief to the aggrieved person from the respondent to meet the expenses incurred and losses suffered including loss of earnings, medical expenses, loss to property and maintenance of the aggrieved person and her children including maintenance under, or in addition, to section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force. Sub-clause (2) provides that the monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. This clause also empowers the Magistrate to order lump sum or monthly payments for maintenance. Sub-clause (6) provides that on the failure of the respondent to make payments of the monetary relief, the Magistrate may direct the employer or a debtor of the respondent to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the respondent.

Clause 21.—This clause lays down that notwithstanding anything contained in any other law for the time being in force the Magistrate may, at any stage of hearing of the application for grant of any relief, grant temporary custody of any child to the aggrieved person or to the person making an application on her behalf and specify the arrangements for visit of such child by the respondent. However, the Magistrate may refuse to allow such visits if in his opinion such visits may be harmful to the interests of the child.

Clause 22.—This clause lays down that in addition to other reliefs which may be granted under the proposed legislation, the Magistrate may, on an application by the aggrieved person, pass an order directing the respondent to pay compensation or damages or both to the aggrieved person for the injuries including for the mental torture and emotional distress caused to her by domestic violence by the respondent.

Clause 23.—This clause provides for grant of interim orders by the Magistrate. He may also pass *ex parte* orders on the basis of affidavits given by the aggrieved person.

Clause 24.—This clause provides for supply of copies of orders passed by the Magistrate free of charge to the parties to the application, the concerned police officer and the service provider.

Clause 25.—This clause lays down that a protection order given under the proposed legislation shall be in force till the aggrieved person applies for its discharge. In case there is a change in the circumstances of a case, the Magistrate may, on application made by the aggrieved person or the respondent pass an order altering, modifying or revoking any order made under the proposed legislation.

Clause 26.—This clause provides that any relief available under the proposed legislation may also be sought in any legal proceeding before a civil court, family court or a criminal court and that any relief which may be granted under the proposed legislation may be sought for in addition to and along with reliefs sought for in a suit or legal proceeding before a civil or criminal court. Sub-clause (3) lays down that the aggrieved person shall be bound to inform the Magistrate of the reliefs obtained by her in any proceeding other than proceedings under the proposed legislation.

Clause 27.—This clause lays down that the Magistrate, within the local limits of whose jurisdiction the aggrieved person permanently or temporarily resides or carries on business or is employed or the respondent resides or carries on business or is employed or the cause of action has arisen, shall be the competent Magistrate to grant protection orders and other orders and to try offences under the proposed legislation. Sub-clause (2) provides that any order made under the proposed legislation shall be enforceable throughout India.

Clause 28.—This clause provides that proceedings under the proposed legislation relating to application and orders for reliefs and offence of breach of protection order or interim protection order by the respondent shall be governed by the provisions of the Code of Criminal Procedure, 1973. Sub-clause (2) envisages that the court may lay down its own procedure for disposal of applications for any relief or for *ex parte* order.

Clause 29.—This clause provides that an appeal from the order made by the Magistrate shall lie to the Court of Session within thirty days from the date of service of the order on the aggrieved person or the respondent, whichever is later.

Clause 30.—This clause seeks to provide that the Protection Officer and members of service providers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code while acting or purporting to act under any of the provisions of the proposed legislation or the rules or orders made thereunder.

Clause 31.—This clause provides that a breach of protection order or an interim protection order by the respondent shall be an offence under the proposed legislation punishable with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Sub-clause (2) provides that the offence of breach of protection order or interim protection order shall be tried as far as practicable by the Magistrate who had passed the order which is alleged to have been breached. Sub-clause (3) provides that the Magistrate, while framing charges regarding breach of order, may also frame charges under section 498A or any other provision of the Indian Penal code or the Dowry Prohibition Act, 1961 in case the facts disclose the commission of any offence under those provisions.

Clause 32.—This clause lays down that the offence of breach of protection order by the respondent shall be a cognizable and non-bailable offence and the court may conclude that the offence has been committed on the sole testimony of the aggrieved person.

Clause 33.—This clause provides that any Protection Officer who fails or refuses to discharge his duties as directed by the Magistrate in the protection order he shall be punished with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

Clause 34.—This clause provides that no prosecution or other legal proceeding shall lie against the Protection Officer except on a complaint filed with the previous sanction of the State Government or an officer authorised by the State Government for the purpose.

Clause 35.—This clause provides that no suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything done or intended to be done in good faith under the proposed legislation or any rule or order made thereunder.

Clause 36.—This clause stipulates that the provisions of the proposed legislation shall be in addition to and not in derogation of the provisions of any other law.

Clause 37.—This clause empowers the Central Government to make rules for carrying out the provisions of the proposed legislation. It also provides that the rules made under the proposed legislation are required to be laid before both the Houses of Parliament.

FINANCIAL MEMORANDUM

Clause 8 of the Bill seeks to empower the State Government to appoint such number of Protection Officers in each district as it considers necessary, to exercise the powers and perform the duties conferred on him by or under this Act. Serving officers can also be designated as Protection Officers under the proposed legislation. The expenditure in this regard is to be borne by the respective State Government.

2. The State Government in respect of a Union territory is the Central Government. If an officer other than a serving officer is appointed as the Protection Officer, some recurring expenditure will be involved in regard to payment of salary and allowances to such officer. Some office expenditure of a negligible nature may also be involved. The exact amount of such expenditure would depend upon the number of Protection Officers as may be appointed.

3. There shall be no other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 37 of the Bill empowers the Central Government to make rules to carry out the provisions of the proposed legislation. Sub-clause (2) of that clause enumerates the matters in respect of which rules may be made under the said clause. These matters, *inter alia*, relate to the qualifications and experience which a Protection Officer shall possess, the terms and conditions of service of the Protection Officers and the other officers subordinate to him, the form and manner in which a domestic incident report may be made, the form in which and the manner in which an application for protection order may be made to the Magistrate, the form in which a complaint is to be filed, the duties to be performed by the Protection Officer, the rules regulating registration of service providers, the form in which an application under sub-section (1) of section 12 of the proposed enactment seeking reliefs under it may be made and the particulars which such application shall contain, the means of serving notices, the form of declaration of service of notice to be made by the Protection Officer, the qualifications and experience in counselling which a member of the service provider shall possess and the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of proposed section 23. Sub-clause (3) provides that the rules made under the proposed legislation shall be required to be laid before Parliament.

2. The aforesaid matters relate to procedure or administrative details and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

P. D. T. ACHARY,
Secretary-General.